DATO' SRI ZULKIFLI OMAR & ORS v. AHMAD SKHRI RAMLI & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
AZIAH ALI JCA
HAMID SULTAN ABU BACKER JCA
[CIVIL APPEALS NO: B-01(NCVC)(W)-412-12-2013 &
B-01(NCVC)(W)-427-12-2013]
14 JANUARY 2015

TORT: *False imprisonment – Unlawful imprisonment – Conviction for two charges under s. 41(2) Securities Industries Act 1983 – Sentenced to fine of RM150,000 in default six months' imprisonment for each charge – Warrant of committal issued against plaintiff for failure to pay balance of fine for which plaintiff was imprisoned – Allegation of wrongful imprisonment for extra 74 days due to negligence of prison authorities – Claim for damages – Whether exemplary damages should only be granted where authorities wrongfully and with knowledge breached obligations – Failure to consider s. 29 Prisons Act 1995 – Failure to show receipt of payment of fine for which plaintiff was imprisoned – Whether no man can take advantage of his own negligence, wrongdoing or omission*

TORT: *Damages – Unlawful imprisonment – Allegation of extra 74 days imprisonment due to negligence of prison authorities – Claim for damages – Exemplary damages – Whether exemplary damages should only be granted where authorities wrongfully and with knowledge breached obligations – Failure to show receipt of payment of fine for which plaintiff was imprisoned – Whether no man can take advantage of his own negligence, wrongdoing or omission*

The plaintiff/respondent ('plaintiff') was found guilty, convicted and sentenced to a fine of RM150,000 in default six months imprisonment in respect of two charges under s. 41(2) of the Securities Industries Act 1983. The plaintiff was to pay a fine of RM300,000 but had only paid RM220,000 and in consequence of not paying the balance, a warrant of committal was issued against the plaintiff stipulating RM150,000 if not paid, in default of six months imprisonment. He had paid in full for one charge and the other charge he had paid partly, but the warrant stated it as RM150,000. The plaintiff could have objected and produced the receipts of payment on the day of arrest and imprisonment and/or could have done so through his solicitors. A warrant of committal was issued by the court and he then had to serve imprisonment for not having paid the balance of RM80,000. The plaintiff's complaint was that he had orally informed the Kajang Prison and later the Bentong Prison where he was detained but the prison authorities had allegedly ignored him. The plaintiff submitted that because of the negligence of the prison authorities, he was detained for an extra 74 days and claimed this portion of the days spent as wrongful imprisonment. The trial judge had found the appellants/defendants ('defendants') liable and awarded the

plaintiff exemplary damages of RM100,000 for wrongful imprisonment. Thus, this was the defendants' appeal in respect of the damages awarded for wrongful imprisonment of the plaintiff.

Held (allowing appeal with costs; setting aside order of High Court)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) The trial judge had granted exemplary damages, which are only granted in extreme cases where authorities wrongfully and with knowledge, breach their obligations under the law and the act is inimical to fundamental guarantees enshrined in the Federal Constitution. It was not ordered for negligent act or tortuous conduct *per se* (*Nurasmira Maulat Abd Jaafar & Ors v. Ketua Polis Negara*, refd). Based on established principles, this was not a fit and proper case even to consider exemplary damages. Further, the judgment did not pass the acid test of reasonableness (*Damusa Sdn Bhd v. MRCB Prasarana Sdn Bhd*, refd). The trial judge had also failed to consider s. 29 of the Prison Act 1995. (paras 9, 10 & 17)

(2) The plaintiff was himself negligent and did now show receipt of payment of fine for which he was imprisoned, notwithstanding that he was represented by solicitors as well as his family members having visited him regularly in the prison. The elementary jurisprudence involved in the instant case related to 'no man can take advantage of his wrong or mistake or negligence' based on the legal maxim *nullus commodum capere potese de inuria sua propria* (*Grimstem Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd*, refd). (paras 3 & 19)

(3) In the instant case, the evidence showed that the plaintiff had already paid RM220,000 on 4 February 2008 and the warrant of committal was only issued on 4 August 2009. Upon seeing the warrant, he should have objected to the right channel with evidence but he did not do so. On the facts, the trial judge ought not to have found in favour of the plaintiff. (para 19)

Bahasa Malaysia *Translation Of Headnotes*

Plaintif/responden ('plaintif') didapati bersalah, dan disabitkan serta dijatuhkan hukuman denda RM150,000, jika gagal membayar, enam bulan penjara bagi dua pertuduhan di bawah s. 41(2) Akta Perindustrian Sekuriti 1983. Plaintif seharusnya membayar denda RM300,000 tetapi hanya telah membayar RM220,000 dan oleh kerana tidak membayar baki yang sepatutnya, satu waran pengkomitan telah dikeluarkan terhadap plaintif yang menetapkan jumlah RM150,000, jika tidak dibayar, akan dikenakan enam bulan penjara. Plaintif telah membayar sepenuhnya bagi satu pertuduhan dan pertuduhan yang lain dibayar sebahagiannya, tetapi waran telah menyatakan RM150,000. Plaintif boleh membantah dan mengemukakan resit pembayaran pada hari penangkapan dan penjara dan/atau boleh berbuat demikian melalui peguamnya. Waran komital telah dikeluarkan oleh

mahkamah dan plaintif terpaksa dipenjarakan kerana tidak membayar baki RM80,000. Aduan plantif adalah bahawa dia telah secara lisan memaklumkan pihak-pihak yang bertugas di Penjara Kajang dan Penjara Bentong di mana dia telah ditahan tetapi mendakwa bahawa pihak berkuasa penjara telah tidak mengendahkannya. Plaintif menghujahkan bahawa akibat kecuaian pihak berkuasa penjara, dia telah ditahan untuk tambahan 74 hari dan menuntut bahawa hari-hari yang dia dipenjarakan sebagai pemenjaraan salah. Hakim bicara mendapati perayu/defendan ('defendan') bertanggungjawab dan mengawardkan ganti rugi teladan sebanyak RM100,000 kerana pemenjaraan salah. Dengan itu, ini adalah rayuan defendan terhadap ganti rugi yang telah diawardkan kepada plaintif untuk pemenjaraan salah.

Diputuskan (membenarkan rayuan dengan kos; mengenepikan keputusan Mahkamah Tinggi)

Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Hakim bicara telah membenarkan ganti rugi teladan, yang hanya diberikan dalam kes-kes terlampau di mana pihak-pihak berkuasa telah secara khilaf dan dengan pengetahuan melanggar kewajipan-kewajipan di bawah undang-undang dan tindakan itu memudaratkan jaminan asas yang termaktub dalam Perlembagaan Persekutuan. Ia tidak diperintahkan untuk tindakan-tindakan kecuaian atau tort (*Nurasmira Maulat Abd Jaafar & Ors v. Ketua Polis Negara*, dirujuk). Berdasarkan prinsip-prinsip mantap, ini bukan kes yang sesuai untuk mempertimbangkan ganti rugi teladan. Tambahan lagi, penghakiman ini tidak lulus ujian kemunasabahan (*Damusa Sdn Bhd v. MRCB Prasarana Sdn Bhd*, dirujuk). Hakim bicara juga telah gagal mempertimbangkan s. 29 Akta Penjara 1995.

(2) Plaintif secara sendirinya telah cuai dan tidak menunjukkan resit pembayaran denda terhadap mana dia telah dipenjarakan, walaupun dia telah diwakili oleh peguam dan ahli keluarganya kerap melawatnya di penjara. Perundangan asas yang terlibat dalam kes ini berhubungan dengan 'tiada siapa boleh mengambil kesempatan daripada kesalahannya atau kesilapannya atau kecuaiannya' berdasarkan maksim undang-undang *nullus commodum capere potese de inuria sua propria* (*Grimstem Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd*, dirujuk).

(3) Dalam kes ini, keterangan menunjukkan bahawa plaintif telah membayar RM220,000 pada 4 Februari 2008 dan waran pengkomitan hanya dikeluarkan pada 4 Ogos 2009. Apabila melihat waran tersebut, plaintif sepatutnya membuat bantahan melalui saluran yang betul dengan mengemukakan keterangan tetapi dia tidak berbuat demikian. Berdasarkan fakta, hakim bicara sepatutnya tidak membuat keputusan memihak kepada plaintif.

Case(s) referred to:

Damusa Sdn Bhd v. MRCB Prasarana Sdn Bhd [2012] 1 LNS 994 HC ***(refd)***

Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd [1987] 1 CLJ 123; [1987] CLJ (Rep) 102 SC ***(refd)***

Henderson v. Preston [1888] 21 QBD 362 ***(refd)***

Ketua Polis Daerah Johor Bahru, Johor & Ors v. Ngui Tek Choi [2013] 4 CLJ 47 CA ***(refd)***

Mc Grath v. Chief Constable of the Royal Ulster Constabulary and Another [2001] 4 All ER 334 ***(refd)***

Mohd Khirudin Yaakub v. Superintendant of Central Prison Kuching & Ors [2013] 7 CLJ 654 HC ***(refd)***

Nurasmira Maulat Abd Jaffar & Ors v. Ketua Polis Negara & Ors [2015] 2 CLJ 231 CA ***(refd)***

Olotu v. Home Office Anor [1997] 1 All ER 385 ***(refd)***

Quinland v. Governor of Swaleside Prison [2003] 1 All ER 1173 ***(refd)***

R v. Governor of Brockhill Prison ex parte Evans (No 2) [2000] 4 All ER 15 ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 69

Prison Act 1995, s. 29

Securities Industry Act 1983, s. 41(2)

For the appellant - Norliza Zulkifli (Hani Aziz Ismail with her); SFC

For respondents - Muhammad Rafique (Zainal Narudin with him); M/s Law Practice of Rafique

[Editor's note: Appeal from High Court, Shah Alam; Civil Suit No: 21 NCVC-18-02-2013 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants'/defendants' appeal in respect of damages awarded for wrongful imprisonment of the respondent/plaintiff came up for hearing on 8 May 2014 and upon hearing we allowed the appeal. My learned brother Azahar bin Mohamed JCA and my learned sister Aziah binti Ali JCA have read the draft judgment and approved the same. This is our judgment.

[2] It must be noted that the cross-appeal was withdrawn with the consent of the parties on the date of hearing.

Preliminaries

[3] A common sense approach needs to be applied to understand the case in the right perspective. Evidence will show the plaintiff/respondent was himself negligent and did not show receipt of payment of fine for which he was imprisoned notwithstanding that he was represented by solicitors as well as his family members having visited him regularly in the prison. The elementary jurisprudence involved in the instant case relates to 'no man can take advantage of his wrong or mistake or negligence, etc'.

Brief Facts

[4] The plaintiff was found guilty, convicted and sentenced to a fine of RM150,000 in default, six months imprisonment in respect of two charges under s. 41(2) of the Securities Industry Act 1983. That is to say he must pay a fine of RM300,000. He had paid RM220,000 and in consequence of not paying the balance, a warrant of committal was issued against the plaintiff stipulating RM150,000 if not paid, in default of six months imprisonment. That is to say for one charge he has paid in full and the other charge he has paid partly but the warrant says RM150,000. The plaintiff could have objected and produced the receipts of payment on the day of arrest and imprisonment and/or could have done so through his solicitors. The fact that he has to serve imprisonment for not having paid the balance RM80,000 is not in dispute.

[5] The plaintiff's complaint is that he has orally informed the Kajang Prison and later the Bentong Prison where he was detained but the prison authorities had ignored. One need to pause here - the warrant of committal was issued by the court and if it was erroneous he ought to have informed the court and corrected the same. The prison authorities were purely acting on the warrant.

[6] The plaintiff says that because of the negligence of the prison authorities he was detained for extra 74 days and claims this portion of the days spent as wrongful imprisonment.

[7] The learned trial judge indeed found as a fact that he had orally informed the prison authorities and found the defendants liable without explaining how that could have been under the law:

(i) when the order for warrant of committal was issued by the court and the prison authorities were just performing their duties in relation to the warrant and if release is to be ordered, it has to be done by the courts and for the purpose of the release the role of the prison authority at the most could have been only 'a messenger' to inform the court.

(ii) the fact that it was the court who had ordered the release upon confirming that the payment was received pursuant to a letter dated by the plaintiff's solicitor dated 8 February 2010 which was received by the prison authorities on 17 February 2010 who had immediately brought to the attention of the court.

(iii) without explaining why the plaintiff and/or his solicitor could not have written the same letter and provide the information as early as 4 August 2009 when the warrant of committal was issued and how exemplary damages of RM100,000 could be awarded when the negligence or fault line was on the plaintiff as early as 4 August 2009 in not disclosing the evidence to the court at the earliest opportunity.

[8] The appellant's memorandum of appeal reads as follows:

(1) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memberikan gantirugi kuantum yang rendah kepada perayu iaitu hanya sebanyak RM322,000.00 sahaja.

(2) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila hanya membenarkan gantirugi am sebanyak RM3,000.00 sahaja untuk tempoh masa sehari penahanan yang salah.

(3) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila menolak tuntutan perayu/plaintiff untuk gantirugi teruk dan pengembalian wang denda.

(4) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gagal mengambilkira dengan sewajarnya kuantum gantirugi am dengan hanya membenarkan RM3,000.00 sehari untuk penahanan salah perayu dan terkhilaf dalam merujuk kepada fakta kes perayu dan menggunapakai kes *Badrul Zaman PS Md Zakariah v. Supritendent, Preventive Detention Centre, Kamunting & Ors* [2011] 4 CLJ 873 sebagai panduan yang tepat berdasarkan fakta kes dan latar belakang perayu.

(5) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gantirugi am yang dibenarkan haruslah lebih dari RM3,000.00 untuk sehari yang terlebih.

(6) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memutuskan bahawa gantirugi teladan hanya sebanyak RM100,000.00 adalah memadai.

(7) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila hanya membenarkan RM100,000.00 sahaja untuk gantirugi teladan.

(8) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila menolak tuntutan pengembalian wang denda plaintiff sebanyak RM70,000.00 dengan memutuskan bahawa denda adalah satu hukuman yang bukan boleh ditarik balik atau dibatalkan sedangkan perayu telah ditahan untuk satu tempoh masa yang seolah-olah perayu tidak membayar denda langsung.

(9) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gagal meneliti bahawa tuntutan pengembalian wang denda oleh plaintiff adalah sebanyak RM70,000.00 kerana plaintiff telah menjalani hukuman penjara yang lengkap selama empat bulan, malah lebih dari empat bulan.

[9] We have read the appeal record and thank counsel for the comprehensive submission. After much consideration to the submission of learned counsel for the plaintiff/respondent and the defendants/appellants in this appeal, we take the view the appeal must be allowed. Our reasons *inter alia* are as follows:

(i) The judgment in our view did not pass the acid test of reasonableness. (See *Damusa Sdn Bhd v. MRCB Prasarana Sdn Bhd* [2012] 1 LNS 994).

(ii) A judgment narrating a story such as the instant case and without considering the legal jurisprudence involving the subject matter and coming to the conclusion in the High Court stage may not give weightage to the paper it is written on, notwithstanding such judgment on an appeal, the Court of Appeal may affirm a decision of the High Court as correct even though the grounds for the judgment may not be satisfactory in cases where the decision passes the acid test of reasonableness. This is so because of s. 69 of Courts of Judicature Act 1964 which reads as follows:

> 69. (1) Appeals to the Court of Appeal shall be by way of rehearing, and in relation to such appeals the Court of Appeal shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
>
> (2) The further evidence may be given without leave on interlocutory applications, or in any case as to matter which have occurred after the date of the decision from which the appeal is brought.
>
> (3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, the further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Court of Appeal.
>
> (4) The Court of Appeal may draw inferences of fact, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.
>
> (5) The powers aforesaid may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and the powers may also be exercised in favour of all or any of the respondents or parties although the respondents or parties have not appealed from or complained of the decision.

[10] In the instant case, the learned trial judge had failed to consider s. 29 of Prison Act 1995 which reads as follows:

> 29. An Officer in Charge shall keep and detain a person duly committed to his custody by a court or competent authority according to the terms of the warrant or order by which the person has been committed or until the person is discharged by due course of law.

[11] It is trite warrant issued by the court has a force of law and need to be followed. This point was well articulated in the case of *Mc Grath v. Chief Constable of the Royal Ulster Constabulary and Another* [2001] 4 All ER 334, where the court relying on the House of Lords decision of *Henderson v. Preston* [1888] 21 QBD 362 observed:

> All that one has to do is to read the warrant. What is a governor of a goat who receives such a warrant to do except to obey it? It is perfectly valid and correct, and is authorized by the Act of Parliament, and is issued

A by persons who have jurisdiction to issue it. It appears to me that the governor by obeying that warrant has simply done his duty, and the warrant protects him and is an answer to the action.

And further down in the judgment it was stated:

B Warrants issued by a court of law required to be treated with the same respect as must be accorded to any order of the court. The general rule was stated by Romer LJ in *Hadkinson v. Hadkinson* [1952] 2 All ER 567 at 569, [1952] P 285 at 288:

> C It is the plain and unqualified obligation of every person against on in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cotternham, L.C., said in *Chuck v. Cremer* (1840) 1 Coop temp Cott 338 at 342-343, 47 ER 884 at 885): "A party, who knows of an order, whether null D or valid, regular or irregular, cannot be permitted to disobey it … It must be dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null E irregular, and who might be affected by it, was plain. He would apply to the court that it might be discharged. As long as it existed it must not be disobeyed.

[12] Quite recently the Court of Appeal in the case of *Ketua Polis Daerah Johor Bahru, Johor & Ors v. Ngui Tek Choi* [2013] 4 CLJ 47; (Rayuan Sivil: F J-01-240-2009), relying on the case of '*McGarth*' in respect of remand order had this to say:

> [47] That being the case, the said remand order dated 9.2.2010 made against the plaintiff remained a lawful order unless and until it is set aside by a High Court exercising its criminal appellate or revision G power.
>
> [48] Until such time, it is really not the function of the learned JC in this case, in determining a civil claim for unlawful detention, to go behind the remand order and to question its legality or the manner in which it was obtained.

H **[13]** In *Olotu v. Home Office Anor* [1997] 1 All ER 385 on a similar subject, the court observed:

> Once the custody time limit has been expired without extension, the Crown Court would have been obliged to order the release of the plaintiff, but such release would have been on bail and the Crown Court I could have imposed terms with which the plaintiff would have been obliged to comply after the release. Once the custody limit had expired, the plaintiff was in my view unlawfully detained, and an order which

> would have led to her release could have been obtained either the Crown Court or from the Divisional Court, but it does not follow that in the absence of any such order the governor was guilty of falsely imprisoning the plaintiff and in my view he was neither entitled nor bound to release her.

And the court also endorsed the argument that there was no duty on the detaining authority to rectify the warrant and it reads as follows:

> Mr. Stephen Richards, for the Home Office, supported the decision of the deputy judge. He submitted that the duty of the governor was to obey the order of the court. Following the committal of the plaintiff under s. 6 of the Magistrates' Courts Act 1980, the plaintiff was (as was clear from s. 22(1)(b)(ii) of the 1985 Act and reg. 5(2)(a) of the 1987 regulations) to be regarded as in the custody of the Crown Court. The governor's duty, under s. 6(3)(a) of the 1980 Act and according to the direction given to him in the warrant, was to hold the plaintiff until she should be delivered to the Crown Court in due course of law. He was never at any material time called upon to deliver the plaintiff to the Crown Court in due course of the law, and could not lawfully take it upon himself to release the plaintiff. She, in any event, had no right to be released after 112 days; her right was to be released on bail by order of the court. Although alerted by the terms of the warrant to the dated upon which the custody time limit was to expire, the governor had no independent role in making any application to the court, nor any authority to release the plaintiff without an order of the court.

[14] In *R v. Governor of Brockhill Prison ex parte Evans (No. 2)* – [2000] 4 All ER 15, the court observed:

> The critical importance of the warrant and what detention it actually commands and authorizes applies both ways as illustrated by the judgment in *Demer v. Cook* [1903] 88 LT 629. Lord Alverstone CJ contrasted two situations. One was where the jailer receives a prisoner under a warrant which is correct in form in which case no action will lie against him if it should turn out that the warrant was improperly issued or the court had no jurisdiction to issue it. The other was where the warrant had on its face expired or the jailer had received the prisoner without any warrant, in which case the action will lie; … the warrant and nothing else is the protection to the gaoler, and he is not entitled to question or go behind it.

[15] In *Quinland v. Governor of Swaleside Prison* [2003] 1 All ER 1173, the English Court of Appeal had this to say:

> Similarly in the case of *Ex p Evans* [1998] 4 All ER 993 [1999] QB 1043, Judge Li said:
>
> > Even if the detention proved to be unlawful, provided an individual is in custody in obedience to an order of the court the governor is not liable to an action for false imprisonment. In effect, the order of the court provides the necessary justification.

[16] In *Mohd Khirudin Yaakub v. Superintendant of Central Prison Kuching & Ors* [2013] 7 CLJ 654, the court had this to say:

> It is clear from this line of authorities that the prison officers and hence the defendants in this case have no obligation to go beyond what it stated on the warrant. They may have the moral duty to verify from the court should a doubt arise as to the correctness of the content of the warrant but they do not have the corresponding legal duty to verify if each and every warrant commitment is correct. Mr Mohd Taufik is again right when he said that to impose on them that legal obligation is too strenuous and burdensome; not to mention impractical. They duty, I must add lies with the court officer who signs the court order or the warrant as in this case, to ensure that it is correct in its detail.

[17] In this case, the court has granted exemplary damages. Exemplary damages are granted only in extreme cases where authorities wrongfully and with knowledge breach their obligations under the law and the act is inimical to fundamental guarantees enshrined in the Federal Constitution. It is not ordered for negligent act or tortuous conduct *per se*. This area of jurisprudence has been explored in detail by the Court of Appeal in *Nurasmira Maulat Abd Jaffar & Ors v. Ketua Polis Negara & Ors* [2015] 2 CLJ 231 and the court held:

> The House of Lords as early as 1964 in *Rookes v. Barnard* [1964] AC 1129 has held that English courts have recognised the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages), and there were two categories in which an award of exemplary damages could serve as a useful purpose, *viz*, in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, in the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff. [See *Sakshi Sharma w/o Rajesh Sharma and others v. State of Himachal Pradesh and others* [2012] Indlaw HP 1474]. The Indian courts have been cautious in granting exemplary damage in ordinary tort claims. In *Common Cause v. Union of India* [1999] 6 SCC 667 it was stated:
>
> > In an action for tort where the plaintiff is found entitled to damages, the matter should not be stretched too far to punish the defendant by awarding exemplary damages except when their conduct, specially those of the government and its officers, is found to be oppressive, obnoxious and arbitrary and is, sometimes coupled with malice ... If we were to apply the rule in *Rookes v. Barnard* [1964] 1 All ER 367 invariably and unhesitatingly and were to award exemplary damages in every case involving government officers or government servants, the result would be appalling.

[18] Based on established principles this is not a fit and proper case even to consider exemplary damages.

[19] It is also well established that no man can take advantage of his negligence or wrong doing or omission, etc, based on the legal maxim '*nullus commodum capere potese de inuria sua propria*'. (See *Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd* [1987] 1 CLJ 123; [1987] CLJ (Rep) 102). This maxim is made applicable in various instances and not only confined to contractual principles as the maxim relates to common sense. In the instant case, the evidence will show that the plaintiff had already paid RM220,000 as early as 4 February 2008 and warrant of committal was only issued on 4 August 2009. Upon seeing the warrant he should have objected to the right channel with evidence but he did not do so. On the facts of the case, the learned trial judge ought not to have found in favour of the plaintiff.

[20] For reasons stated above we are of the considered view that it is fit and proper case to allow the appeal with costs of RM5,000. The order of the High Court is set aside.

We hereby ordered so.